

REMARKS/ARGUMENTS

Claims 1-10 were cancelled in a Preliminary Amendment filed October 1, 2004, and a new set of Claims, 12-42, were presented to the Examiner for her consideration at that time. However the Examiner failed to consider the new set of claims. In a telephone interview on December 18, 2006, with the Examiner's Supervisor Mr. Roy King, Applicants' counsel was informed that a new restriction/election requirement would be issued and the period for response would be restarted. However, to this date Applicants have not received the new restriction/election requirement. Accordingly the instant response to the restriction/election requirement is based on cancelled claims.

The Examiner has delineated the following inventions as being patentably distinct:

Group I: Claims 1-3, drawn to a steel wire; and

Group II: Claims 4-10, drawn to spring.

Applicants provisionally elect, with traverse, Group I, Claims 1-3, in view of the following reasons.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples to support any conclusion in regard to patentable distinction. Moreover, when making a lack of unity of invention in a national stage application, the Examiner has the burden of explaining why each group lacks unity with each other (i.e., why there is no single inventive concept) specifically describing the unique technical feature in each group (M.P.E.P. § 1893.03(d)). Applicants respectfully traverse the restriction requirement on the grounds that the Examiner has not carried out the burden of providing any reasons and/or examples to support any conclusion that the claims of the restricted groups are patentably

distinct, or providing any reasons and/or examples to support any conclusions that the groups lack unity of invention.

The Examiner asserts that Groups I and II are not related to a single general inventive concept under PCT Rule 13.1 and 13.2 because they lack the same corresponding special technical feature.

The Examiner, however, has not considered that the claims in each group are considered related inventions under 37 C.F.R. § 1.475(b) in which the inventions are considered to have unity of invention. Applicants submit that while PCT Rules 13.1 and 13.2 are applicable under 37 C.F.R. § 1.475(b) provides in relevant part that “a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn to ... (3) A product, process specially adapted for the manufacture of said product, and use of said product.” In the instant application the claims are related to product and the use of said product. The Examiner has failed to show that another product can be used to make the claimed springs. All of the claims share a special technical feature.

Moreover, Applicants respectfully submit that a search of all the claims would not impose a serious burden on the Office. As the Office has not shown any evidence that a Restriction Requirement should be required when the International Preliminary Examination Report did not, restriction is believed to be improper.

For the reasons set forth above, Applicants request that the requirement for restriction be withdrawn.

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